

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES EDWARD BENORE,

Petitioner,

CASE NO. 07-CV-12692

v.

HON. GEORGE CARAM STEEH

MARY BERGHUIS,

Respondent.

ORDER ACCEPTING MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION, (#9) AND DENYING CERTIFICATE OF APPEALABILITY

Petitioner Charles Edward Benore, a state prisoner currently incarcerated at the Brooks Correctional Facility in Muskegon Heights, Michigan, was convicted of first degree murder following a jury trial in the Monroe County Circuit Court. On June 10, 2004, petitioner was sentenced to a mandatory term of life imprisonment without possibility of parole.

Petitioner appealed as of right to the Michigan Court of Appeals, raising, through counsel, the following claims:

1. Ineffective assistance of counsel where trial counsel failed to impeach the eyewitness with contradictory statements given to police.
2. Denial of a fair trial because judge admitted into evidence a morbid photograph which was not probative and only served to inflame the jury.
3. Denial of his constitutional right to present a defense due to judge cutting off inquiry into victim's accusations that petitioner had placed surveillance cameras

in the home.

4. Prosecutor improperly referred to the complainant as a “victim” during the proceedings, as did the prosecution’s witnesses.

5. Denial of due process when court denied defendant’s motion for directed verdict based on insufficient evidence to support first- or second-degree murder convictions.

6. Denial of due process in failing to instruct jury properly on manslaughter.

The court of appeals found no merit to petitioner’s arguments, and affirmed his conviction and sentence. People v. Benore, No. 256299, 2005 WL 2861970 (Mich. Ct. App. Nov. 1, 2005). Petitioner’s application for leave to appeal to the Michigan Supreme Court was denied. People v. Benore, 475 Mich. 884 (2006).

On June 26, 2007, petitioner filed this pro se application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, raising the six claims that he previously raised in the state courts. Respondent filed an answer to the petition, and no reply was filed. On October 28, 2009, the Magistrate Judge filed a report and recommendation thoroughly analyzing the law and arguments, and recommending that petitioner’s application for the writ of habeas corpus should be denied. Objections to that report have not been filed by petitioner within the established time period. The court has reviewed the file, record, and magistrate judge’s report and recommendation and accepts the magistrate judge’s well-reasoned recommendation. Accordingly,

IT IS HEREBY ORDERED that the court ACCEPTS and ADOPTS the Magistrate’s report and recommendation as its findings and conclusions in this matter. Petitioner’s application for writ of habeas corpus is DENIED.

In the event that petitioner appeals this order, he must obtain a certificate of appealability. The Court may issue a certificate of appealability if the petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). This Court finds that petitioner has not made a substantial showing of the denial of a federal right. Therefore, the Court hereby finds that a certificate of appealability is not warranted.

SO ORDERED.

Dated: November 30, 2009

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on November 30, 2009, by electronic and/or ordinary mail.

S/Josephine Chaffee
Deputy Clerk